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In The

Supreme Court Of The United States

OCTOBER TERM 1963

No. 9

CHARLES F. BARR, et al., Petitioners,

vs.

CITY OF COLUMBIA

No. 10

SIMON BOUIE, et al., PETITIONERS

vs.

CITY OF COLUMBIA

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

REPLY OF THE CITY OF COLUMBIA TO THE SUPPLEMENTAL BRIEF OF THE UNITED STATES

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INTRODUCTION

These two cases arose in the City of Columbia, South Carolina. Their occasion was the arrest, by City Policemen, of the petitioners, then city residents, for violation of established trespass statutes. Those arrested were tried in the Recorder's Court of the City of Columbia, under prosecution by the City Attorney, with defense representation by local attorneys of the City of Columbia. The appeals that

followed through the State Courts were handled and argued by the City Attorney and his assistant, and, in behalf of the petitioners, by their attorneys from the City of Columbia.

The standards of admissible evidence and applicable law applied during the conduct of these trials and their appeals through the state courts were in accordance with then understood constitutional principles and established rules of criminal proceeding. No effort was made, by either side, to venture beyond these boundaries.

Upon this Court's grant of *certiorari*, these cases basically were presented to this Court on the original issues and records together with other cases of similar import from Florida and Maryland. The Solicitor General intervened for reversal in all cases as an Amicus Curiae on the narrow ground first raised here by petitioners. At his conditional request, this Court granted the Solicitor General further leave to file his brief on the broader constitutional question of "state action" offensive to the Fourteenth Amendment.

The Amicus Brief[1] of the United States filed pursuant to this permission goes far beyond both the evidence in these records and the understood principles of constitutional law under which these cases were tried. If this Court should conclude that the principles contained therein are in fact consistent with the requisites of the United States Constitution and its Amendments, then it is respectfully submitted that these cases should be remanded for the introduction of evidence in accordance therewith.

The only real issue which these records present for decision is the narrow question of whether the decisions of the private proprietors were "coerced" by the City of Columbia within the meaning of the rules laid down in *Peterson v. Greenville*, 373 U.S. 244 and *Lombard v. Louisiana*, 373 U.S. 267. The attempt by the Solicitor General to inject before this Court issues involving other cities and states

[1] All further references to Brief, are to that of the Solicitor General, unless otherwise designated.

violates the mandate of the "Case or Controversy" rule of Article III, Section 2 of the Constitution of the United States.

> The Court will not "formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied."[2]

Where evidence and facts beyond these records were needed in support of the principles advocated by the Solicitor General, there has been substituted references to texts and treatises in a truly gigantic research effort by the Department of Justice.[3] The City of Columbia has neither the human nor the monetary resources to meet this study during the time allotted.

Instead, it is hoped that this Court will consider the constitutional effects and ramifications of the rule advocated by the Solicitor General pointed out herein. There will be no effort to defend other cities of South Carolina or other States of this Union from the accusations made. These cases arose and were prosecuted in the City of Columbia among its citizens. No other city and no state, beyond that of the statutes of South Carolina and the conduct of its Courts, is involved.

There is attached an Appendix of reprinted local news stories about the pertinent developments in the constitutional area of lunch counter and restaurant establishments in Columbia during recent years. Every effort was made to include representative stories. Admittedly this procedure is highly irregular, but if there is to be no opportunity to present competent testimony on the issues raised by the Solicitor General, no other means exist.[4]

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[2] Dissenting Opinion, Mr. Justice Brandeis, *Ashwander v. T.V.A.*, 297 U.S. 288, 347. See *Rescue Army v. Municipal Court*, 331 U.S. 549, 569; *Muskrat v. U. S.*, 219 U.S. 346.

[3] Under prior decisions of this Court, such factual matter, not reflected in these records, should be stricken and disregarded. *Washington Post Co. v. Chaloner*, 250 U.S. 290, 294; *Yellow Poplar Lumber Co. v. Chapman*, 215 U.S. 601; *Board of Commissioners v. W. N. Coler & Co.*, 186 U.S. 46 L. ed. 1260) *Hussman v. Durham*, 165 U.S. 144, 150.

[4] There have been no law review articles or texts written on the subject of the integration of lunch counters or restaurants in the City of Columbia.

QUESTIONS PRESENTED

1. Do these records contain any evidence of "state action" offensive to the Fourteenth Amendment under the established constitutional principles heretofore delineated by this Court?
2. Does the Fourteenth Amendment, solely because of the Prior Actions of the Governments and Agents of the State of Residence, require a different set of property rights for a citizen of the United States?

ARGUMENT

Summary

I.

Under the existing interpretations of this Court, these records contain no evidence of any "state action" offensive to the Fourteenth Amendment. At the time of these cases there were no statutes, ordinances, or official city policies requiring separation of the races in lunch counters in the City of Columbia. The only role of the City police evidenced is that of preserving the peace by preventing the use of individual force.

The decisions of the proprietors to refuse service were purely private, based upon a business judgment of the preferences of the clientele which they deemed most profitable. Similar private business decisions led to the service of all races in the other drugstore departments. In the City of Columbia, other lunch counter proprietors, exercising their private and independent business judgments, have chosen to serve, in some instances, both races, and in others, only members of the Negro Race. Here, petitioners appear for the deliberate purpose of protesting the judgments of these particular owners and provoking these cases.

The prior decisions of this Court have consistently held that where no state owned property was involved and where the agents of the State were not parties to the effective decision to segregate, no prohibited "state action" ex-

isted. In these cases, the private decisions of the owners to refuse petitioners service and require their removal were independently effective and enforceable without the presence or intervention of State agents. Therefore, no prohibited "state action" occurred.

II

Under the Constitutional Rule advocated by the Solicitor General, certain "Slave and Border" States would be prohibited by the Fourteenth Amendment from permitting lunch counter proprietors either to use the private property owner's traditional right of reasonable self help or to call upon the police to evict Negro customers from the private premises. Presumably, the Rule would not obtain in other States and would not apply to the eviction of unwanted clientele of other races. The reason for the Rule is an alleged "conspiracy" between prior governments of those States and certain of their private citizens to foster separation of the races and thereby "brand" the Negro an "inferior caste."

The adoption by this Court of such a Rule as a part of the Constitution of the United States would result in the destruction of the following fundamental principles on which it is grounded:

1. Sovereignty of Statehood. The State would bear the responsibility for the allegedly wrongful past conduct of its governments and agents, thus becoming imperfect and destructible.

2 Equality Among States. The Constitution would require the classification of some States as inferior, thereby depriving their citizens of basic property rights.

3. The Concept of "State Action" under the Fourteenth Amendment. The Fourteenth Amendment would apply to the Sovereign, as distinguished from the agents through which it acts. In lieu of "state action" would be substituted a weighing of "the importance of the elements of State involvement."

4. Justice for the Governed. The Sovereign would punish the governed for past conduct, now ended, which had been approved and condoned by the Sovereign when it occurred.

5. The Function of the Judiciary. In lieu of reasoned Constitutional interpretation, the judiciary would assume the legislative role of decision based upon personal knowledge and opinion grounded on information and facts beyond the scope of the record of any Constitutional Case or Controversy.

The reasons suggested justify no such obliteration of known Constitutional principles. When analyzed, the relationship between the State and the lunch counter is basically no different from that of the private home. The private interest of the proprietor in his clientele is essential to the success of his business. The remedies of the Negro within existing Constitutional boundaries are adequate and have proven successful when employed. There was never any concerted effort to brand him inferior.

These cases present no occasion for this Court to adopt the Rule promulgated by the Solicitor General as a part of the Constitution of this Nation.

I

These Records Present No Evidence of Prohibited "State Action" in the Established Constitutional Sense.

The position of the City of Columbia with respect to the existence of any Constitutional "State Action" has already been set forth in its principal brief filed with this Court, together with the applicable constitutional decisions of this Court. In view of the Solicitor General's brief, there are, however, several points which should be reiterated.

There never has been a statute in South Carolina requiring segregation of the races at private lunch counters or other purely private eating establishments.

There never has been an ordinance of the City of Co-

lumbia requiring or encouraging separation of the races in private lunch counters or restaurants.

There was no policy, official or unofficial, among the Columbia City Council, the Columbia City Manager, the City Police, or other City agents that encouraged or required segregation of the races in private lunch counters or restaurants.[5] If any policy at all existed, it weighed in the other direction. See Appendix pp. 6A, 7A-9A, 12A, 4A-16A.

Nor did the role of the City Police and the subsequent conviction of the petitioners evidence any City or State policy with regard to segregation. Until the argument presented here, it had always been thought that the owner of such establishments had the traditional common law right to use reasonable self help to expel individuals who refused to leave the premises. *State v. Starnes*, 213 S.C. 304, 49 S.E. 2d 209; *State v. Rogers*, 130 S.C. 426, 126 S.E. 329; Appendix p. 14A. This traditional common law right, applicable equally to homes, churches and private clubs (*State v. Bradley*, 126 S.C. 528, 120 S.E. 240), explains the real reason for the existence of criminal trespass law—the permission of a resort to the use of an official police force in lieu of self help. Thus the City Police appeared in these cases pursuant to the basic purpose of all governments since the days of the cave man—the preservation of an orderly society by the Sovereign at the expense of the use of brute individual force or hired assistants.[6] And this is the only interest evident. Whatever else may be said, the

[5] Ordinances of other communities, within or outside of the State of South Carolina, in no way reflect the policy of this City.

[6] Despite argument to the contrary, this interest is vital to the Sovereign.

> Many violations of such regulations result in no direct or immediate injury to person or property but merely create the danger or probability of it which the law seeks to minimize. While such offenses do not threaten the security of the state in the manner *of* treason, they may be regarded as offenses against its authority, for their occurrence impairs the efficiency of controls deemed essential to the social order as presently constituted. *Morissette v. U. S.*, 342 U.S. 246, 256.

City and State in these cases were otherwise actively neutral.[7]

In essence, the Solicitor General recognizes this fact and suggests in lieu of active involvement, State participation through a massive momentum, created by prior state action, which coerced or dictated the decisions of the drug store owner or the preferences of the clientele to which they catered. Br. 91-92.

But if the decisions to refuse petitioners service at the lunch counters were in fact influenced or coerced by "massive" State participation in a prior program of total community segregation from the Negro's "cradle to the grave," Brief p. 62, what is the explanation of the total and complete integration of service to both races, unequivocally evidenced in these records, in all other departments of these large, modern drug stores, including drug departments so close to the core of any home? This fact alone, without any analysis of the subsequent integration of these lunch counter facilities, completely refutes the suggestion that the drug store managers' decisions were the result of State coercion. If any real State (or city) influence to degrade the Negro had in fact existed, it would have appeared in all departments of the stores involved.

In truth, the decisions of these drug store owners were independently theirs. They had invested their savings in the conduct of these lawful businesses. They had made a business judgment, heretofore thought to be lawful, that they could best prosper by serving both races in all departments except the lunch counter.[7a] The latter department they thought would best succeed by catering solely to the

[7] By separating portions of the testimony in *Barr*, it could be made to appear that the police plotted and encouraged petitioners' arrest. The record as a whole is conclusive that such was not the case. Aware of the pending demonstration (possibly informed by Bouie, See Bouie R. 4), where others had recently occurred (Barr R. 23-24), the police arrived in advance. The owner's concern was petitioners' removal, whether or not by arrest. Any assertions to the contrary, the decision that they be removed was the owner's. This is the important decision and the only decision involved here. Could the police have forcibly removed petitioners without arrest? If so, by what authority?

[7a] Consider the reasoning of Mr. Justice Brennan and cases cited in *United States v. Parke Davis & Co.* 362 U.S. 29, 37, 44.

members of the white race. These were private business decisions. *Barr* R. 17-18; 22; *Bouie* R. 24, 26.

There are in Columbia three "racial" types of lunch counters and restaurants. There are those in which the owners have decided, for business reasons, to cater solely to Negroes. *Bouie* R. 60; *Barr* R. 49; There are establishments, like those here were formerly operated, which choose to serve only members of the white race. Finally, there are those which cater to all members of the public, regardless of race.[8] Appendix, p. 4A, 7A. In each instance the owners have made a business decision as to which type clientele they could most profitably serve, based, in most instances upon factors of location, decor, overhead costs and the like, rather than the State "pressures" or even personal preference. See *Bouie* R. 26, *Barr* R. 20.[9]

To state that an owner's choice to serve only one race is designed to discriminate against or prejudice another race is simply not true. Accurately stated, the decision is to separate one race from the other in the particular establishment. In the City of Columbia, the practice is equally operative with respect to eating places for each race—with a third group catering to both. If the suggestion of the Solicitor General is true, is not the proprietor who caters solely to a Negro clientele discriminating against and seeking to prejudice white customers, whose presence is undesired?

Nor do the real facts of these cases present circumstances where an innocent potential customer was denied expected service because of race—these are not the cases of an unxpected "philistine . . . among litterateurs." Br. p. 105. These actions arise out of planned demonstrations, deliberately organized and carefully timed for the purpose

[8] The existence of the first and third type refutes the possiblitiy of any conspiracy among restaurant owners of sufficient magnitude to work a deprivation of equal protection of the laws. *Collins v. Hardyman*, 341 U.S. 651, 661. Compare *Bouie* R. 31.

[9] In spite of argument to the contrary, Br. 104-107, the owner's interest in this decision is as real and vital as is his interest in his profit margin, both because of his concern for the business—not because of any desire to stigmatize a "caste."

of testing the policies of selected eating establishments and provoking official action to create constitutional test cases.[10]

Finally, the Solicitor General suggests that even if the private owners made the *effective* decision to segregate, apart from any State influence, state action still exists if the State's "participation facilitates or encourages discrimination." Br. p. 70. Yet all of the cases relied upon for this proposition, except *Shelley v. Kraemer*, 334 U.S. 1, involve either state owned property, state coercion by statute (or City ordinance) or official pressure, or active participation by public officials in the *effective* decision to segregate. Br. p. 70-72. The real rule for which these cases stand is simply that where state funds are involved, either in the form of property, whether or not under lease to others, or in the form of salaries to public officials, those funds may not participate in any form of segregation. In other words, the Fourteenth Amendment prohibits a state from *permitting* segregation on *its* property or by *its* agents where they are the effective force.[11]

Admittedly, *Shelley v. Kraemer* runs closer, but it does not reach the facts of these cases. In *Shelley*, the neighbors had no lawful right, by individual action, to remove the Negro from his property or to divest him of his legal title. Only the State judiciary could do this and in choosing to do so, the state government made the effective decision requiring the discrimination. Here, as has been shown, the traditional rights of the owner of private property included the right to refuse service, and, if the customer, by remain-

[10] *Bouie* R. pp. 4-5; *Barr* R. p. 30. These records present nothing akin to the circumstances of *Thompson v. Louisville*, 362 U.S. 199.

[11] Subsequent developments in the *Girard Trust* case, upon which the Solicitor General relies, Br. p. 71, confirm this distinction. After this Court's decision in *Pennsylvania v. Board of Trusts*, 353 U.S. 230, the state court removed the City connected trustees and substituted private individuals, none of whom held public office or exercised state or municipal governmental powers. *In Re Girard College Trusteeship*, 391 Pa. 434, 138 A. 2d 844 (1958). The following appeal to this Court was dismissed. *Pennsylvania v. Board of Trustees*, 357 U.S. 570, reh. den., 358 U.S. 858. Thus, in the absence of state agents involved in the "effective" decision, their removal by the state court so as to permit segregation was not "state action."

ing, obstructed business, to remove him by individual action. See Appendix p. 14A. The owner's decision to refuse service was therefore, in and of itself alone, *effective*, so far as the segregation was involved. When petitioners then refused to leave, they assumed the roles of obstructionists to the ordinary conduct of the proprietor's business, and he had the right to use reasonable force for their removal. The subsequent intervention of the peace officers, because of this latter right, was entirely neutral, to avoid the use of individual physical force and the possible resulting violence and breach of the peace. Their role is unrelated to and uninvolved in the decision of the owner to segregate.

Thus it is clear that under none of the previous decisions of this Court do these records present any evidence of "state action" in the known Constitutional sense. The Solicitor General apparently recognized this and therefore urges this Court to adopt a novel rule of Constitutional Law.

II

The Fourteenth Amendment Does Not, Solely Because of the Prior Action of the Government or Agents of The State of Residence, Require a Different Set of Property Rights for A Citizen of the United States.

The novel Constitutional Rule of Law promulgated by the Solicitor General of the United States of America as amicus curiae in this Court is basically this:

> The Fourteenth Amendment[12] prohibits the sixteen "Slave and Border States,"[13] because of their prior governments' alleged participation in an attempt to brand the Negro race an "inferior caste" people, from either permitting the operator of a private lunch counter to call upon the police to evict unwanted Negro customers who refuse to leave or from resorting to the

[12] Possibly also the Thirteenth and Fifteenth Amendments. See Br. p. 111.
[13] Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, Texas, Virginia and West Virginia. See Br. p. 24.

traditional common law rights of property owners to use reasonable force in the removal of such persons from their private property.

It is respectfully submitted that the very statement of such a rule as a part of the Constitutional Law of this Nation is sufficient to explain why it cannot and should not be adopted by this Court. Nevertheless, we would briefly illustrate its ramifications and reasoning.

The reasoning is thus:

The Fourteenth Amendment prohibits a *State* from depriving its citizens of certain rights preserved under federal or state law; the governments of the named States and their citizens for a period in our history maintained Negroes as slaves; after the Civil War and the enactment of the Fourteenth Amendment the governments of these States continued, for a period of time, now ended, but sufficiently recent to be "a 'substantial factor'" Br. p. 91, to foster separation of the White and Negro races; because segregation still exists in some eating places in these States, they may not allow their governments to permit the owners of such businesses to enforce a choice of customers based upon race, by evicting those who refuse to leave through the use of a city police force or by reasonable self help.[14]

The ramifications follow:

In efect, these sixteen "Southern and Border" States are *guilty* members of this federation under the Constitution. Apparently there is nothing they can *now* do to cure this "guilt."[15]

As a result, the owners of those private restaurants in these guilty States which cater solely to the members of the Caucasian race are denied both the traditional right of self control of their private property and the protection

[14] The Solicitor General would still permit the owner to refuse service. Br. 81-83. Apparently the right, derived from the State, to refuse to serve a potential customer is less offensive to the Fourteenth Amendment than the right, from the same source, to require his removal. But see Br. p. 40.

[15] At least one "guilty" State, Maryland, a party to this action, has acted to remove the guilt by enacting a public accommodation law, like 29 other states. Br. p. 31, Fn. 22. Yet it is equally indicted.

of such rights by municipal peace officers. These property owners are denied this right *because of the state in which they live*—as a matter of the Constitutional Law of this Union!

For example, the Fourteenth Amendment would permit the owner of a lunch counter in Massachusetts or Utah or Arizona to operate his lunch counter for the members of the Caucasian race only, if he, or the members of his clientele, so preferred. If any potential customer sought to challenge this operation, the Constitution would permit the owner either to call the official law enforcers to evict that customer or to resort to reasonable self help. Yet if that owner now moved to a "guilty" State and sought to maintain the same business operation, he would be denied by the United States Constitution the traditional rights afforded in "innocent" States, regardless of his independent wishes and the resulting financial effects on his business. Br. pp. 107-108.

In short, for the first time in the history of this Nation, our Constitution would be interpreted as dictating a different set of rights and rules for its citizens, dependent solely upon the State in which they resided and operated their businesses.

Even further—the reasoning of the Solicitor General would draw another Constitutional Line within the "guilty" States. The "guilt" of the States indicted derives from the conspiracy of their earlier governments with private citizens to "brand" the Negro as an "inferior caste" by segregation. Therefore only the owners of those eating establishments catering solely to White clientele are denied the traditional rights. These rights would still be available to the owners of establishments catering only to members of the Negro race. That is to say, the owners of the many exclusively Negro eating establishments in the City of Columbia (*Barr* R. 49, *Bouie* R. 60) can continue to call upon the police to evict members of other unwanted races,

while the Fourteenth Amendment would prohibit the same recourse to their White brethren.

Furthermore, as heretofore indicated, since in most instances the choice of the owner of a lunch counter catering to non-Negroes is dictated by the wishes of his customers, the rule of the Solicitor General would give the owner no choice, in practical effect, other than to suffer financial loss, and possibly that of his business.[16] The Solicitor General's rule affords the owner no method of forcing his regular customers to continue to frequent his establishment if he serves those with whom they do not choose to associate. Therefore, the lunch counter proprietor can either serve Negroes, and lose the profitable trade to which he caters,[17] or he can refuse to serve the unwanted customers and have them deprive him of all business by lining his counters and refusing to leave as a part of demonstrations such as those that precipitated these very cases.

Nowhere in the annals of the Constitutional Law and history of this Nation have we been able to discover any precedent or comparable law for the Constitutional Rule that *certain* citizens of particular States of this Union *must be denied basic rights to operate their businesses*—not because of what those individuals believe—not because of what they individually have done—not because of the current laws or attitudes of their cities or their Sovereign States, which laws or attitudes they could influence—not because of any acts of State officials—BUT SOLELY BECAUSE OF THE CONDUCT OF PAST GOVERNMENTS OF THE STATES IN WHICH THEY LIVE—*WHICH CONDUCT WAS CONSTITUTIONALLY APPROVED WHEN IT OCCURRED.*

Such a rule strikes at the very heart of our Constitutional government! The purpose of the Constitution is to

[16] These effects are termed "hardly consequential." Br. p. 18. See also Br. pp. 108-109.

[17] The opportunity to present evidence to this Court on the economic effect of such integration in some lunch counters would be welcomed.

preserve the existence of the Sovereign States.[18] Until now, these States, as distinguished from their governments and agents, were thought to be perfect and indestructible, like the Union. As explained in *Poindexter v. Greenhow*, 114 U.S. 270, 290-291:

> . . . The State itself is an ideal person, intangible, invisible, immutable. The government is an agent, and, within the sphere of the agency, the perfect representative; but outside of that it is a lawless usurpation. The Constitution of the State is the limit of the authority of its government, and both government and State are subject to the supremacy of the Constitution of the United States and of the laws made in pursuance thereof. . . .
>
> That which, therefore, is unlawful because made so by the supreme law, the Constitution of the United States, is not the word or deed of the State, but is the mere wrong and trespass of those individual persons who falsely speak and act in its name. It was upon the ground of this important distinction that this Court proceeded in the case of *Texas v. White*, 7 Wall. 700, when it adjudged that the acts of secession which constituted the Civil War of 1861 were the unlawful acts of usurping state governments, and not the acts of the States themselves, inasmuch as "the Constitution in all its provisions, looks to an indestructible Union, composed of indestructible States"; and that consequently the War itself was not a war between the States, nor a war of the United States against States, but a war of the United States against unlawful and usurping governments, representing not the States, but a rebellion against the United States. . . .[19]

[18] *Charles C. Steward Machine Co. v. Davis*, 301 U.S. 548; *Brush v. Commissioner of Internal Revenue*, 300 U.S. 352; *Ashton v. Cameron Co. Water Improvement District No. 1*, 298 U.S. 513; *Carter v. Carter Coal Co.*, 298 U.S. 238.

[19] See also *Thorington v. Smith*, 8 Wall. 1; *Williams v. Bruffy*, 96 U.S. 176; *Horn v. Lockhart*, 17 Wall. 570; *Keith v. Clark*, 97 U.S. 454.

When the agent of the Sovereign uses its power in violation of the Constitution, that agent ceases to represent the State.[20] This must be so. Otherwise, the agent would have the power, by unlawful conduct, to destroy the State and the Union. As explained by this Court in *Texas v. White*, 7 Wall. 700, after reviewing the activities of the Texas secession government:

> The Union of the States never was a purely artificial and arbitrary relation. It began among the Colonies, and grew out of common origin, mutual sympathies, kindred principles, similar interests and geographical relations. It was confirmed and strengthened by the necessities of war, and received definite form and character and sanction from the Articles of Confederation. By these the Union was solemnly declared to "be perpetual." When these Articles were found to be inadequate to the exigencies of the country, the Constitution was ordained "to form a more perfect Union." It is difficult to convey the idea of indissoluble unity more clearly than by these words. What can be indissoluble if a perpetual Union, made more perfect, is not?
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> * * * * * *
>
> . . . Not only, therefore, can there be no loss of separate and independent autonomy to the States, through their Union under the Constitution, but it may be not unreasonably said that the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the national government. *The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States.*
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> * * * * * *

[20] *Dorsey v. State Athletic Commission*, 168 F. Supp. 149, affd. 359 U.S. 533; *Orleans Parish School Board v. Bush*, 242 F. 2d 156, cert. den. 354 U.S. 921; *Charlottesville v. Allen*, 240 F. 2d 59. See *Ex Parte Young* 209 U.S. 123.

> Considered, therefore, as transactions under the Constitution, the ordinance of secession adopted by the convention and ratified by a majority of the citizens of Texas, and all the acts of her legislature intended to give effect to that ordinance, were absolutely null. They were utterly without operation in law. The obligations of the State as a member of the Union and of every citizen of the State, as a citizen of the United States, remains perfect and unimpaired, pp. 724-726. [Emphasis added.]

Yet under the Solicitor General's rule, the Fourteenth Amendment holds sixteen Sovereign States responsible for the prior conduct of their past governments, former agents and officials. If that conduct was wrongful, as here contended, the responsible Sovereign State becomes guilty, imperfect and destructible, and is required to purge itself by denying to its present residents, through its present innocent government, basic and traditional rights of private property. In short, under the guise of the Fourteenth Amendment, the Solicitor General would ignore the distinction between the Sovereign and the government through which it acts, with the result that the Amendment destroys the amended.

> *This distinction is essential to the idea of constitutional government.* To deny it or blot it out obliterates the Line of Demarcation that separates constitutional government from absolutism, free self government, based on the Sovereignty of the people, from that despotism, whether of the one or the many, which enables the agent of the State to declare and decree that he is the State—to say "L'Etat, C'est moi." *Poindexter v. Greenhow, Supra,* p. 291. [Emphasis added.]

Among the most basic fundamentals of constitutional interpretation is the principle that the Fourteenth Amendment has no application to the Sovereign State, but only

to its government or to its government's agents through whom it acts.

> We have said the prohibitions of the Fourteenth Amendment are addressed to the States. They are: . . . They have reference to the actions of the political body denominated a state, by what other instruments or in whatever modes that action may be taken. A State acts by its legislative, its executive or its judicial authorities. It can act in no other way. The constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of law . . . . This must be so, or the constitutional prohibition has no meaning. Then the State has clothed one of its agents with power to annul or to evade it.
>
> But the Constitutional Amendment was ordained for a purpose. It was to secure equal rights to all persons, and, to insure to all persons the enjoyment of such rights, power given was to enforce its provisions by appropriate legislation. Such legislation must act upon persons, not upon the abstract thing denominated a State, but upon the persons who are the agents of the state in the denial of the rights which were intended to be secured.[21]

The whole historical concept of "State Action" is based upon this premise. The Sovereign can only act through its governmental agents. It is upon the "actions" and conduct of these governmental agents that the prohibition of the

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[21] *Ex Parte Virginia*, 100 U.S. 339, 346-347. See also *Cooper v. Aaron*, 358 U.S. 1, 15-17; *Home Telephone & Telegraph Co. v. Los Angeles*, 227 U.S. 278, 90-91; *James v. Bowman*, 190 U.S. 127; *Chicago Burlington & Quincy Railroad Co. v. Chicago*, 166 U.S. 226; *Scott v. McNeal*, 154 U.S. 34; *Yick Wo v. Hopkins*, 118 U.S. 356; *Civil Rights Cases*, 109 U.S. 3, 11; *Neal v. Delaware*, 103 U.S. 370, 397. Even Congress has recognized this distinction:

> Every *person* who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory, subjects or causes to be subjected any citizen of the United States or other within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws . . . 42 U.S.C. 1983 [Emphasis added.] See *Monroe v. Pape*, 365 U.S. 167.

Fourteenth Amendment operates—not the Sovereign State itself, as the Solicitor General contends.

In place of this historic concept would be substituted a weighing of the "importance of the elements of State involvement." Br. pp. 64-70, 79. The measure of the weight is against that of the "involvements of the elements of private action," both against the "fundamental aims of the constitutional guarantee." Br. 79. Yet no standards of what constitute "importance" or real "involvement" or "fundamental aims" is offered. Nor is any "weight" given the interests or rights of the property owners. In short, these cases run afoul of the Fourteenth Amendment *because they do!* If adopted by this Court, the sole effect of such a rule for future cases would be the obliteration of existing guidelines of Constitutional application and the substitution of meaningless phrases. If the almost century old understandings of the Fourteenth Amendment seem difficult of delineation, consider the alternative offered.

> This limitation on the scope of the prohibitions of the Fourteenth Amendment serves several vital functions in our system. Underlying the cases involving an alleged denial of equal protection by ostensibly private action is a clash of competing constitutional claims of a high order: liberty and equality. Freedom of the individual to choose his associates or his neighbors, to use and dispose of his property as he sees fit, to be irrational, arbitrary, capricious, even unjust in his personal relations are things all entitled to a large measure of protection from governmental interference. This liberty would be overridden, in the name of equality, if the strictures of the Amendment were applied to governmental and private action without distinction. *Peterson v. Greenville*, 373 U.S. 244, 250, Separate Opinion, Mr. Justice Harlan.

Until now there has always been equality among the Sovereign States of this Union. This equality is the very keystone of the Nation. The rule of the Solicitor General would

require discrimination among these members—a classification of certain of these States and the rights of their residents into an inferior constitutional category. This principle is in direct conflict of the understanding of this Court for over 170 years.

> For equality of states means that they are not "less or greater, or different in dignity or power."[22]

> "This Union" was and is a Union of States, equal in power, dignity, and authority, each competent to exert that residiuum of sovereignty not delegated to the United States by the Constitution itself.[23]

> To this we may add that the Constitutional equality of the States is essential to the harmonious operation of the scheme upon which the Republic was organized. When that equality disappears we may remain a free people, *but the Union will not be the Union of the Constitution.*[24]

> There can be no distinction between the several states of the Union in the character of the jurisdiction, sovereignty, and dominion which they may possess and exercise over persons and subjects within their respective limits.[25]

> Equality of constitutional right and power is the condition of all the States of the Union, old and new.[26]

Surely some of the reasons given in justification of this proposed Constitutional Rule should be subjected to further analysis.

1. *The State's Relation to Lunch Counters.*

It is said that the State has a peculiar relation to lunch counter establishments; that they are really "*public*" in

[22] *United States v. Texas*, 339 U.S. 707, 720. Per Mr. Justice Douglas.
[23] *Coyle v. Smith*, 221 U.S. 559, 567.
[24] *Ibid.*, p. 580. [Emphasis added.]
[25] *Illinois Central Railroad Co. v. Illinois*, 146 U.S. 387, 434.
[26] *Escanaba & L. M. Transportation Co. v. Chicago*, 107 U.S. 678, 689.

nature; that no intimate relationships are there involved; and that therefore it is proper that the State should be required to deny the proprietor certain rights to select his clientele. Br. 28-36, 94-105.

At the outset, it should be clearly remembered that, as the Solicitor General recognizes, lunch counters and restaurants were not historically regulated by the states at common law. Br. 96; 136-138.[27]

Nor are such establishments basically more regulated by State law than the home, private club or law office. The homeowner's legal title to his property is defined and limited, in all the myriad degrees, by State statutes and State common law. Restrictive covenants, city ordinances and codes, and the tort principles of nuisance, all facets of State law, dictate to the homeowner the type of activities, domestic animals and pets that he may maintain and conduct on his premises; the size, design and lot location of his home; minimum safety standards of its construction; the manner of its demolition; electrical wiring requirements; garbage, sanitation, plumbing, sewerage standards; and subject the home to multiple fire prevention restrictions.[28] Like the lunch counter operator, the homeowner pays property taxes on the home and its contents.[29] Nor is the tort liability of the homeowner to visitors substantially differ-

[27] The basic distinction between carriers, turnpikes and inns and lunch counters is manifest. In earlier times the carriers and turnpikes were the only means of transportation and movement, and the inns, as the only places where travelers could stay, were an integral part of the transportation system. Thus these facilities were the subject of the State's interest in freedom of movement. But these lunch counters are unrelated to transportation and are but two of scores of lunch counters in Columbia, many of which are open to Negroes.

See *Williams v. Howard Johnson Restaurant*, 268 F. 2d 845 (4th Cir.); *Davidson v. Chinese Republic Restaurant*, 201 Mich. 389, 167 N.W. 967; *Nance v. Mayflower Tavern*, 106 Utah 517, 150 P. 2d 773; *Noble v. Higgins*, 95 Misc. 328, 158 N.Y.S. 867; *State v. Brown*, 112 Kan. 814, 212 Pac. 663; *Chocos v. Burden*, 74 Ind. App. 242, 128 N.E. 696.

[28] General Code of City of Columbia, 1956; Zoning Ordinance of City of Columbia, 1953; Plumbing Code of City of Columbia, 1955; Fire Prevention Code of City of Columbia, 1960; Building Code of City of Columbia, 1958; Gas Code of City of Columbia, 1954; *Archambault v. Sprouse*, 218 S.C. 500, 63 S.E. 2d 459 (restrictive covenants); *Bowlin v. George*, 239 S.C. 429, 123 S.E. 2d 528 (Nuisance).

[29] Sections 65-1503, 1521, 1611, 1644 of 1952 Code of Laws of South Carolina.

ent from that of a lunch counter proprietor—much less that of a lawyer to clients visiting his office.[30]

Neither are the relationships among visitors on a homeowner's premises materially different from those that exist in a restaurant. The daily contacts of the home with deliverymen, laundrymen, mailmen, repair personnel, garbage collectors, door-to-door salesmen and the like, are at best casual, but it is inconceivable that this fact would deprive the homeowner of the right to require their departure. Yet the home holds out an open invitation to all such persons. Likewise, the intimate relationship between persons dining at a restaurant is closely akin to that of guests in a home—and the continued existence of the restaurant is dependent upon the proprietor's ability to preserve and promote surrounding circumstances which permit this intimate relationship, the most important of such being the other clientele served.

Finally, it is contended that these establishments were "public" by reason of an open invitation to all members of the community. No such open invitation existed. The policies of these proprietors to exclude certain segments of the public from service at the lunch counters were known to all—as if defined by neon signs at the entrance. The records below establish that the very purpose of petitioners' presence was to protest these policies. *Bouie* R. 4-5, 35-37. *Barr* R. 30.

In short, there is nothing distinctive in the relation of these establishments with the State which either justifies or requires such a Constitutional rule, or which could sustain a delineation of such a rule to prevent its application to all forms of private property—including homes, private clubs and churches.

2. *The Negro's remedy when service is refused.*

[30] As to business invitees; *Mullinax v. Great A. & P. Tea Co.*, 221 S.C. 433, 70 S.E. 2d 911.

As to guests; Prosser, Torts, 1955 Ed. 445, 447-450.

As to clients; 65 C.J.S. 519-520.

It is said that the "guilty" States have failed to afford the petitioners a remedy against the proprietor's selection of clientele (Br. 21-64, 73-77), and thus it is proper for the Constitution to deny those States the right to permit the proprietors to enforce that selection.

In the first instance, it is well to define the "right" for which a remedy is needed. To date, there has been no "right," Constitutional or otherwise (unless created by state statute), to maintain one's presence on the private property of another, against the wishes of the owner, absent some ground of general public welfare, health, police power, etc., none of which is revealed in these records.

But even assuming a "right," an adequate remedy is afforded by the States. If in fact the problem is of the magnitude suggested, the right to vote, alone, is sufficient to change the practice complained of by State law, rather than by extending the Constitutional Rule beyond all known bounds.[31] There is no suggestion that this remedy has not been made available.

Even further, the State has afforded the practical remedies of economic boycott, peaceful picketing and demonstration.[32] The news stories reprinted in the appendix furnish a startling example of the effectiveness of these remedies in producing changes in the City of Columbia, just during the short few years they have been employed. The history of these two establishments subsequent to the events giving rise to these cases present further evidence in this regard.[33] Even more so is the support, reflected in these news stories, petitioners are receiving from the official leaders of the City of Columbia. Appendix pp. 14A-17A.

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[31] See, for example, the thirty states having public accommodations statutes. Br. page 31.

[32] These cases arise out of the exercise of this remedy, except that here petitioners exceeded permissible bounds and infringed upon the rights of others.

[33] Neither any longer operates a segregated lunch counter. Eckerd's lunch counter is fully integrated. Taylor Street Pharmacy removed its lunch counter and operates an integrated Venteria.

Thus the State remedies already afforded have, when used, proven adequate to protect the "right" here involved, if one exists. There is no need for this Court to grant constitutional relief by creating for the first time in American history a group of second-class sovereign States.

3. *The Purpose of the Segregation Law.*

The Solicitor General argues that the motives of the States in enacting certain segregation laws were to brand the Negro "inferior" and a lesser member of a "caste." Br. 36, 58-63. Therefore, the argument goes, these States may not now permit private exercise of traditional property rights which would result in any segregation among private individuals.

Unquestionably the purpose of these old statutes was to separate the races in the areas regulated. However, beyond that, the assumption that the Negro was thereby made an inferior caste is that of the Solicitor General.

More likely is the fact that the preference of segregation, reflected in the particular statutes cited, stems from the tremendous and widespread cultural and historical differences in the backgrounds of the two races involved—not from a desire to perpetuate a lesser form of slavery. The very fact that all, or at least a great many more, facets of community life were not regulated by such statutes is overwhelming evidence that the latter motive was not present.[34]

But even if these reasons, and others suggested, could justify the Constitutional classification of a sovereign State of this Union in a separate "guilty" category because of any present day "state action," this is not the argument

[34] See for example, the Black Codes at Br. p. 45-48. These codes following immediately upon the freedom of the slaves were undoubtedly influenced by the motives suggested. But their life was short, and nothing comparable followed.

In any event, the motive of these state legislatures is not for the consideration of this Court:

> "The holding of this Court in *Fletcher v. Peck* (U.S.) 6 Cranch 87, 130, that it was not consonant with our scheme of government for a court to inquire into the motives of legislators, has remained unquestioned. See cases cited in *Arizona v. California*, 283 U.S. 423, 455." *Tenney v. Brandhove*, 341 U.S. 367, 377.

presented. The indictment is for past conduct, now ended, *at a time when the Constitution, as construed by this Court, the Federal Judiciary System, the Congress of the United States, and its Executive Branch condoned and approved the "state action" now attacked.*

To this we may add that, when seventeen states and the Congress of the United States have for more than three-quarters of a century required segregation of the races in the public schools, and when this has received the approval of the leading appellate courts of the country including the unanimous approval of the Supreme Court of the United States at a time when that court included Chief Justice Taft and Justices Stone, Holmes and Brandeis, it is a late day to say that such segregation is violative of fundamental constitutional rights. It is hardly reasonable to suppose that legislative bodies over so wide a territory, including the Congress of the United States, and great judges of high courts have knowingly defied the Constitution for so long a period or that they have acted in ignorance of the meaning of its provisions. The constitutional principle is the same now that it has been throughout this period; and if conditions have changed so that segregation is no longer wise, this is a matter for the legislatures and not for the courts.[35]

[35] *Briggs v. Elliott*, 98 F. Supp. 529, 537 (per Parker, J.) reversed, 347 U.S. 483.

For example:

a. The Supreme Court of the United States

Plessy v. Ferguson, 163 U.S. 537 (Segregated railway cars); *Cumming v. Board of Education*, 175 U.S. 528 (Segregated schools); *Chiles v. Chesapeake & Ohio Ry.*, 218 U.S. 71 (Segregated railroad cars); *Jones v. Jones*, 234 U.S. 615 (Intestate property of a Freedman); *McCabe v. Atchinson, Topeka & S.F. Ry.*, 235 U.S. 151 (Segregated railroad cars); *Corrigan v. Buckley*, 271 U.S. 323 (Race restriction on the sale of property); *Gong Lum v. Rice*, 275 U.S. 78 (Segregated schools); *Missouri ex rel Gaines v. Canada*, 305 U.S. 337 (Segregated law school).

b. The Federal Judiciary

Gray v. Cincinnati Southern Ry. Co., 11 F. 683 (Segregated carriers); *U. S. v. Buntin*, 10 F. 730 (Segregated schools); *Logwood v. Memphis & C. Ry. Co.*, 23 F. 318 (Segregated railroads); *The Sue*, 22 F. 843 (Segregated steamships); *McQuinn v. Forbes*, 37 F. 639 (Segregated steamship dining facilities); *Stevens v. U. S.*, 146 F. 2d 120 (Inter-racial marriages

Thus, the gist of the argument:

> The United States Constitution now requires certain "guilty" States to deprive their citizens of traditional property rights because of the conduct of prior State governments which, at the time, was approved as lawful by that Constitution.

In short, the Sovereign must punish the guilty for past conduct which the Sovereign *approved and condoned* at the time. There is no comparable rule in American jurisprudence. It offends the spirit of the Fifth Amendment, the Fourteenth Amendment and the purpose of the compact

> to form a more perfect Union, *establish Justice*, insure domestic Tranquility, provide for the common defense, promote the general Welfare, *and secure the Blessings of Liberty to ourselves and our Posterity* . . .[36]

Finally, it should be noted that the rule suggested carries no definitions nor measurable standards for a reasoned Constitutional Decision as to when, in time, the special Constitutional classification of the sixteen "guilty" States should be removed. While the Solicitor General recognizes the widespread variation in time and degree of the past

prohibited); *Kerr v. Enoch Pratt Free Library of Baltimore*, 149 F. 2d 212 (Employment of certain races refused).

c. The Congress

18 Stat. Part 2, Sec. 281-3, 310, 314 (1874) (Segregated schools in the District of Columbia); 60 Stat. 1041 (1944) (Segregation in hospitals constructed with Federal aid); 26 Stat. 417 (1890) (Segregation permitted in Agricultural & Mechanical colleges receiving Federal aid); 13 Stat. 389 (Special pension provisions for widows of Negro soldiers); 13 Stat. 11 (Separate military units for Negro volunteers).

d. The Executive Branch

McGhee & Ginger, *The House I Live In*, 46 Cornel Law Q. (1961) 191 (Segregated Federal Housing); Greenberg, *Race Relations and American Law* (1959) 158 (Discrimination in Government Employment—Cabinet Posts & Judicial Appointments).

[36] Preamble, The Constitution of the United States. [Emphases added]. Compare *Calder v. Bull*, 3 Dall. 386; *Webster v. Cooper*, 14 Howard 488; *Cummings v. Missouri*, 71 U.S. 277; *Kring v. Missouri*, 107 U.S. 221; *Jonesboro v. Cario*, 110 U.S. 192; *U.S. v. Brindle*, 110 U.S. 688; *Forbes Pioneer Boat Line v. Board of Commissioners*, 258 U.S. 338. See "The Federalist," No. XLIV, Jan. 25, 1788 (James Madison) as edited in Lodge, *The Federalist*, 279 (1888).

The rule advocated is mindful of the example given by the Solicitor General in his first brief in these cases:

> It is, like 'the ancient laws of Caligula,' 'a trap for the innocent.' Brief for the United States as Amicus Curiae (Nos. 6, 9, 10, 12 and 60, October Term, 1963) p. 26.

conduct complained of among the "guilty" States, he terms these acts sufficiently "recent" and "massive" in all sixteen States to justify the indictment sought. Br. 59-60, 91-92, 103-104. Yet inherent in the proposed rule is the idea that at some future date the Fourteenth Amendment will free the restrictions sought, if the guilty behave. How would any court determine by means of the judicial process when that point had been reached? The only possible means is the resort of the individual judges to their own personal knowledge of beliefs (or to opinions of then current authors of texts and law review articles), a function heretofore reserved to the members of legislative bodies.[37]

In these cases a Constitution is being interpreted. Such a statement is in itself a sufficient explanation why the proposed rule, which flies in the face of known fundamental constitutional principles, should not be adopted.

CONCLUSION

For all courts of Constitutional decision, these are trying years in the realm of human liberties. In contrast with the century past, these decisions are not to be resolved by the military—but instead are brought before the Constitutional Judiciary, each on the outermost limits. In very recent years, these decisions are even more difficult because of the simultaneous and contrasting challenge of the ideal, on the one hand, and the deliberate, if peaceful, provocation and violation of known law and rights, on the other —in every case to test the boundary strength of this Constitutional design.

In a sense, the only comparable era in the history of the Constitutional Judiciary was that following the Civil War when it was faced with preserving of the principles of this Union, the re-establishing of its purposes, and further defining of the rights of its citizens, all in the face of extreme public sentiments. Until now, the boundaries of

[37] *Prentis* v. *A.C.L. Ry.*, 211, U.S. 210; *Barrett* v. *Indiana*, 229 U.S. 26. Carter, *The Ideal & the Actual in the Law*, The American L. Rev. (1890) 765-766.

those constitutional principles, purposes, and definitions have survived. Today, within these limits, the strength of this Union has never been greater nor the Constitutional Judiciary more alert to the protection of the individual liberties of the citizens. These cases present no occasion for the obliteration of those boundaries. In the language of Mr. Chief Justice Marshall:

> . . . [I]t is not to be disguised that the framers of the Constitution viewed with some apprehension the violent acts which might grow out of the feelings of the moment; and that the people of the United States, in adopting that instrument, have manifested a determination to shield themselves and their property from the effects of those sudden and strong passions to which men are exposed.[35]

For the foregoing reasons the judgments of the Supreme Courts of the Sovereign States should be affirmed.

Respectfully submitted,
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[35] *Fletcher v. Peck*, 6 Cranch 87, 137.

NEGROES SIT DOWN TOWN—NO INCIDENTS

July 21, 1960

The Columbia Record

About a dozen young Negroes staged lunch counter demonstrations in Main Street stores yesterday afternoon. Observers at the scene said there were no incidents. Police stood by, but made no arrests.

One lunch counter closed after the Negroes took seats, and two others were roped off and closed before the demonstrators went into the stores.

A smaller group of four Negroes had staged a brief demonstration earlier in the day.

* * * * *

NEGROES TOLD NOT TO BUY YULE PRESENTS

November 19, 1960

The State

COLUMBIA (AP)—A South Carolina official of the National Assn. for the Advancement of Colored People Friday called upon all Negroes for a Christmas boycott on stores which employ segregation practices.

The Rev. I. DeQuincy Newman of Columbia, field secretary of the state chapter of the NAACP, also urged Negroes to practice self-denial by not buying any Christmas presents for themselves.

"It is urgent," said Rev. Newman, "that Negroes use the money saved as a result of 'no Christmas buying' to increase their contributions to the church of their choice, increase their investment in freedom and equality by giving to the NAACP, and to add to their bank savings and to pool their resources with other Negroes to establish business enterprises of their own."

The Negro clergyman said "the drive for no Christmas gift buying is aimed against those retail stores and other business establishments which discriminate against Negroes."

"Refusal of lunch counter service, refusal to accord courtesy titles to adult Negroes, maintenance of segregated rest rooms and water fountains and biased employment practices," Rev. Newman said, "are bold examples of racial discrimination on the part of the vast majority of retail stores, service stations and other places of business."

He said Negroes are called upon to stay away from stores which discriminate against them "in order to retain self pride and human dignity and to resist the pressures of the segregationist."

Rev. Newman urged Negroes to buy items of necessity from their friends and "to seek the support of the total community for an intensified campaign for the dignified use of their purchasing power."

He added that Negroes should refrain from buying luxury items for themselves in order to make the 'no Christmas buying drive' as effective as possible.

Rev. Newman's statement carried at its conclusion the slogan:

"No Christmas gift buying in '60 will help you be free by '63."

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NEGRO SIT-INS TO CONTINUE 'INDEFINITELY'

December 16, 1960

By The Associated Press.

The State

Sit-in demonstrations by Negroes will continue here "indefinitely," a spokesman for the group said Thursday.

The comment from David Carter, a divinity student at Benedict College came after Negroes demonstrated at three Columbia variety store lunch counters for the third day in a row.

There were no arrests or incidents and they were not served. Six college-age Negroes were at Woolworth's, three at S & H Kress Co., and four at Silver's for about two hours.

McCrory's, where Negroes had demonstrated Tuesday and Wednesday, closed its lunch counter before the demonstrations began. Merchandise was displayed on the counters and paper bags were placed over the stools.

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250 STAGE SIT-INS AT FIVE STORES

February 17, 1961

The State

An estimated 250 Negro young people, presumably students, staged a 2½ hour demonstration at five Columbia downtown stores Thursday.

There were no incidents.

David Carter of Benedict College, who acted as spokesman for the demonstrators, told The State he expected no incidents as "our group is well disciplined."

Lunch counters were closed in four of the stores—Silvers, S. H. Kress Co., Walgreens and McCrory's.

Woolworth served white persons who sought service. Several did. The Negroes were not served.

City Manager Irving G. McNayr and Police Chief L. J. Campbell were on hand. Each store had a police officer or two inside to oversee the situation. The State Law Enforcement Division had four agents on hand.

However, at most of the stores, the demonstrators attracted little attention.

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5 MORE NEGROES ARRESTED AFTER DEMONSTRATIONS

February 23, 1961

The State

Five more Negroes protesting arrest were jailed by city police yesterday in Columbia's third straight day of anti-segregation demonstrations.

The five arrested tried to pass a "no trespassing" sign at a downtown store.

Nine women and three men set up a two-line picket outside the store, moving up and down. They carried signs.

While the marchers kept it up a dozen took seats at two variety store lunchcounters, but were unserved.

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Eight Concerns

LUNCH COUNTERS HERE INTEGRATED

August 24, 1962

The State

Eight Columbia business establishments will today be in their fourth day of integrated lunch counters.

The integration in the stores involved has been brought about with no incident of any nature reported.

The following are the companies where the voluntary plan of integration is in operation:

Woolworth's, Kress', Walgreen's, Eckerd's, Silver's, H. L. Green, W. T. Grant and Rose's.

The integration was brought about as a result of the acceptance of a plan designed for an orderly change.

This plan was agreed to by the stores and a group of Negro leaders, after conferences among store officials, representatives of the municipality, civic leaders not associated with the stores and representatives of the Negroes.

Under the plan, an agreed-upon and limited number of Negro customers would be served for an agreed-upon period as an introduction.

From time to time over the last two years there have been demonstrations by Negroes on Main Street in behalf of integrated lunch counters in the variety and drug stores.

Those who formulated and implemented the plan now in effect said they were actuated by the desire to avoid a repetition of conditions which had been created by sit-ins, parades, picketings and the boycotts of the last two years.

This is the first integration of lunch counters in South Carolina.

Some bus terminal and air line terminal eating places are operated on an integrated basis. Also, the street buses in Columbia are, and the municipally-operated golf course at Charleston.

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YOUTHS PICKET IN PROTEST OF LUNCH COUNTER MIXING

August 29, 1962

The Columbia Record

Two sign-carrying white youths picketed two Columbia stores Tuesday in protest over integrated lunch counters.

Lake High and Eddie Hightower, both students at the University of South Carolina, picketed near Eckerd's Drug Store and the F. W. Woolworth store at the Richland Mall Shopping Center on the outskirts of Columbia.

Their signs bore the inscriptions, "Eckerd's and Woolworth's have mixed Lunch Counters. I am Boycotting," and "Money Spent at Eckerd's And Woolworth's Is Money Spent For Race-Mixing."

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COLLEGE-AGE BOYS PICKET STORES HERE

September 5, 1962

The Columbia Record

Several college-age youths Tuesday picketed several Columbia Main Street stores protesting recent racial integration of the stores' lunch counters. They carried signs for about two hours.

Similar pickets were also seen at Richland Mall and Trenholm Plaza, two shopping centers which have integrated lunch counters.

The picketing is the first on Main Street since the counters were integrated. One picket carried a sign on Main Street saying: "Do You Want Columbia To Become Another Washington, D. C. I Don't."

The picketing is similar to that of two youths last week

at the Richland Mall Shopping Center at Forest Drive, and Beltline Boulevard.

The manager of one of the stores said he did not notice any change in the volume of business for the day, either at the lunch counter or in other departments.

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BATES DENIES ACTIVE PART IN INTEGRATION

September 7, 1962

By The Associated Press

The Columbia Record

Mayor Lester L. Bates has emphatically denied he had an active part in the recent integration of Columbia lunch counters.

"The simplest way to describe this is as a voluntary movement on the part of citizens," the mayor said Thursday.

He said there is no bi-racial committee in the city, nor does the city intend to have one.

Bates' denial was prompted by reports the Columbia integration plan had the endorsement and aid of city officials, including the Chamber of Commerce, business and community leaders and a Negro group.

The mayor declined to comment on whether or not he endorsed the integration effort.

Earlier this week, Charleston Republican Chairman Micah Jenkins said Mayor Bates, store officials and Negro leaders "conspired" to bring about the integration. Jenkins dubbed the integration a "sacrifice to political expediency" by the Democrats.

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ARTICLE ON COLUMBIA MIXING AT LUNCH COUNTERS REPRINTED

The News and Courier (Charleston, S. C.)

EDITOR'S NOTE: The following article, which deals with

the integration of lunch counters in Columbia, was published recently in the *Pittsburgh Courier*.

By John H. McCray

COLUMBIA, S. C.—Sixteen Columbia stores opened lunch counters "to all persons" Tuesday, August 21, joining eight other eating establishments who have for several months offered a non-racial service at eating counters, five of which are of the "stand at counter" category.

Only three stores are in the "pending" category, that is not yet known to be open to all persons. Only one of these, the James L. Tapp Co., is reportedly a "hold-out."

The others, United Cigar and Dodd's Variety store apparently weren't checked out when city and Chamber of Commerce officials worked out the desegregation.

Uniquely, a check by The Courier disclosed that actually white eating places were catching up with Negro cafes and restaurants.

The city's four most popular Negro-operated food places, the Alben, College Inn, Pig Trail Inn and the fashionable Fountain Bleu, all said they'd been serving customers on a non-racial basis for many months and planned continuing this policy.

Thursday, the newly opened-to-all stores were complaining to city officials.

Mayor Lester L. Bates passed on to a ten-man Negro committee which had triggered the desegregation a request from merchants that they be sent Negro customers. None felt they had had enough Negro eaters the first two days.

Negro traders were trying to remedy the situation, but one, Dr. L. Palmer Chappelle, a City Commissioner, pointed out that the rounding-up campaign was "unnatural," pointing out that Negroes normally would be most likely to patronize these counters only when on business in the vicinity.

"Negroes in Columbia—as in most Southern cities—are accustomed to eating at home," he advised.

The Columbia desegregation came two months and one week behind the planned June 15 schedule. The delay is explained by a political campaign and developments facing city and Chamber of Commerce teams who were assigned the project.

For example? A plan to adopt processes of two Georgia and one North Carolina cities, all of which had desegregated, was dropped in favor of another developed from "on the spot" study.

The plan was also deferred in favor of the final method of studying techniques used in several cities over a three state area. The plan finally adopted is akin to what is called the "Raleigh" (N. C.) plan. It is simply one in which adults only patronize desegregated counters the first ten or fifteen days.

The project got underway in May after the Negro committee of business and professional men met with Mayor Bates and won a pledge of cooperation and a promise from City Council.

The committee was non-organizational and as those working from the white side are also, is pledged to a "no credit" for this accomplishment excepting that it is the accomplishment of all citizens of Columbia.

Originally, the committee consisted of eight persons. It has now been enlarged to 10. Its members are:

Dr. J. A. Bacoats, president of Benedict College, the Rev. Maxie S. Gordon, Dr. James M. Hinton, chairman; C. D. "Pete" Ingram, secretary; Willis C. Johnson, John H. McCray, Dr. C. O. Spann; I. P. Stanback, Rev. R. C. Wilson and Dr. Howard E. Wright, president of Allen University.

Following is a list (unofficial) of establishments serving food now desegregated in Columbia all with seats:

UPTOWN: Greyhound Bus Terminal, Kwik shop (both for several months), Woolworth, Kress, Walgreen, Eckerd's, Silvers, H. L. Green, Belk's (being re-installed).

RICHLAND MALL: Eckerd's and Woolworth; TRENHOLM PLAZA: W. T. Grant, Walgreen, Rose's; MIDLAND SHOPPING CENTER: W. T. Grant, Roses, Eckerd's at Five Points and Atlantic Thrift Discount Center on Two Notch Road.

Counters without seats open: McCrory's, Taylor St. Pharmacy, Zayre's, Trailway Bus Station (several months), and Sears Roebuck and Co. Pending are the James L. Tapp Co., United Cigar store and Dodd's Five and Ten (stand up at counter).

Columbia becomes the first South Carolina city to drop counter segregation, two years behind a short-lived city plan of 1960 to make it the "first city in the South" to desegregate.

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HOWARD JOHNSON POLICY HERE REMAINS SAME

December 8, 1962

The State

A choice in serving customers will remain the policy of the Howard Johnson Restaurant in West Columbia, said Mrs. Mary K. Price, manager.

Since she operates the restaurant under franchise agreement, Mrs. Price said, local proprietorship enables her to decide service policy.

The Howard Johnson Restaurant here is one of 359 in the nation run by local proprietors under licensing agreements which do not give the company control over racial policies.

Her statement followed a Howard Johnson company declaration Friday that its policy is to provide "service without discrimination" over the nation. There are 297 company-operated restaurants.

Columbia Racial Picture

MORE OPPORTUNITY OPENED TO NEGROES

September 13, 1963

The State

Governmental Affairs Staff

The admittance of three Negro students to the University of South Carolina on Wednesday marked another chapter in a long and continuing story of integration in the State's Capital City.

Some have resulted from court action, but other moves have been voluntary and include facilities and employment.

There has been increasing employment of qualified Negroes in major industries in the metropolitan area, as well as in retail stores and local government agencies. Negroes are now working as clerks, cashiers, and in so-called white collar jobs in plants and businesses here.

Many retail merchants have eliminated racial signs from restrooms and drinking fountains; lunch counters have been integrated; dressing and fitting rooms have been desegregated in most major retail stores; and policies of addressing all customers by courtesy titles (Mr., Mrs. and Miss) have been effected.

Segregation signs have been removed in city and county government buildings and on restrooms of service stations operated here by major oil companies.

Integrated now are the USO, city buses, restaurant and restroom facilities at the Columbia Airport, bus and railroad stations, the Columbia Art Museum, the Columbia Science Museum and Planetarium and the Richland Technical Education Center.

Political conventions held at The Township Auditorium or in hotels have been integrated for many years as has the Richland County Public Library.

There are Negro members of the City Planning Commission, Decent Literature Committee, Cleaner Columbia Committee, City Board of Health, Urban Rehabilitation

Advisory Board, Girl Scout Advisory Board, and the YWCA Board.

Columbia's City Council meetings are not segregated and the council has formally adopted a policy of non-discrimination in hiring city employes.

Employment by the City of Columbia is on a civil service examination basis. Exclusive of police and fire departments, the city employs 527 persons, 215 of whom are Negroes. That is 51 per cent of the total.

The Richland County sheriff's office has employed two Negro deputies and there are eight Negroes on the city police force, four regular officers and four school crossing guards.

Negro police have been upgraded to automobile patrols and city firemen to engineers. There are nine Negro firemen now employed.

There have been 35 Negro applicants for the police force in 10 years, 11 of them hired; 37 applications for the fire department in the past 10 years, nine now employed. Sixty-six of the 153 employes of the Recreation Department are Negroes, 39 of them in supervisory positions, 24 of 41 employes of the Water Construction Department are Negroes, 10 of them are equipment operators or skilled workers.

Efforts toward de-segregation of other activities in the city are presently underway.

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TWO GROUPS DEMONSTRATE IN COLUMBIA

September 18, 1963

The State

Around 50 sign carrying Negroes Tuesday picketed four Main Street theaters in a quiet demonstration.

Several white youths picketed the marchers at each theater. There were no arrests or incidents. Demonstrations began around 4 p. m. and continued well into the night. Demonstration headquarters is Bethel AME Church.

The National Association for the Advancement of Colored People youth group was divided into sign bearers and those trying to purchase theater tickets—they were turned away. Apparently picketing on their own, the handful of white youths carried prosegregation placards and strolled alongside the Negroes.

Both groups were careful to obey sidewalk ordinances and traffic lights.

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COLUMBIAN SAYS POLICE REFUSED HIM PROTECTION

September 28, 1963

The Columbia Record

A Columbia businessman said today he was "denied police protection" when Negro pickets threatened him and attempted to force their way into his establishment.

"All I want is police protection when I ask for it," said Maurice Bessinger, owner of several eating establishments in Columbia.

Police Chief L. J. Campbell was not available at police headquarters today for comment on the charge.

Bessinger said he asked police officers on four different occasions this week to arrest Negro pickets after they "trespassed on my property and attempted to force their way into my store."

Negroes began picketing Bessinger's recently opened eating establishment in the 1400 block of Main Street Wednesday, he said.

"When I told a group of five or six that I chose not to serve them, one of them told me they would make a little white spot out of me," Bessinger said.

"A policeman standing nearby came over and I told him I wanted them arrested," Bessinger said. "The police officer crossed the street where two of his superiors were observing the picketing," Bessinger said.

"While he was across the street, one of the Negroes

pushed the door into my face while I was standing inside," Bessinger said. "I motioned to the policeman, and after coming over he told me he would have to talk to the captain across the street."

"The policeman never came back," Bessinger said.

Bessinger said another picket told him, "What you've got here, bricks will take care of." Bessinger said he told policemen on four different occasions on Friday that he wanted the pickets arrested for trespassing on his property.

Police were called, "twice Thursday afternoon but they never came," Bessinger said.

"One of the pickets was arrested Friday afternoon after a police officer crossed the street and returned with a superior," Bessinger said.

"I had told all of the pickets they were trespassing and I would have them arrested if they continued to trespass," Bessinger said. "As each one passed in front of my door I asked a policeman to arrest them," he said. Bessinger said the door to the establishment is about eight feet from the sidewalk.

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TWO NEGROES SERVED HERE

October 5, 1963

The State

Two Negroes apparently were served in a Columbia restaurant Friday.

Mrs. Vernita Henderson, 340 Campenella Circle, and the Rev. W. Simmons said they were served in the Downtowner Motel Restaurant about 5 p. m.

The manager of the motel was out of town and unavailable for comment Friday night.

CHARGES AGAINST RESTAURATEUR ARE DISMISSED

October 6, 1963

The State

Charges of disorderly conduct against a Columbia restaurant operator accused of threatening racial demonstrators with a weapon were dismissed Saturday in Recorder's Court.

John Andrew Siokos, 37, operator of Capitol Cafe in the 1200 block of Main Street, was accused on a warrant signed by Rev. J. W. Mungin, 42-1 Saxon Homes, a leader of local Negro demonstrations.

Rev. Mungin said that after he and another Negro, Helen Gossett, entered the cafe Friday and asked for service, Siokos told them he did not serve "blacks" and demanded them to leave the establishment.

Rev. Mungin said that Siokos drew a shotgun from behind the counter and also threatened to use the gun if the Negroes returned.

In dismissing the charge, Judge T. Pou Taylor said that the Constitution grants citizens the right to protect their homes and places of business and to order persons from the premises.

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VOLUNTARY INTEGRATION URGED HERE

December 4, 1963

The State

By Charles Wickenberg
Executive News Editor

A large committee of Columbia businessmen studying race relations agreed Wednesday decisions to integrate should be left to individual firms but urged area hotels, motels and theaters to plan for early voluntary desegregation.

Official sources were silent on the action; but *The State*

learned the meeting voted overwhelmingly for the resolution. The committee of 85 was asked to make the study months ago by the mayor and city council.

Mayor Lester L. Bates said Wednesday night he had no knowledge of the resolution.

Other sources confirmed the meeting and the resolution, but there was no official spokesman for the group of businessmen.

The study presented at the meeting said in part:

"The excellent race relationships existing in this city are a matter of pride and have been achieved by clear thinking and calm attitudes. It is our studied opinion that the solving of desegregation problems is best accomplished through the initiative of local citizens rather than outside directed demonstrations.

"We have noted that outside instigated demonstrations engender distrust and hate which takes its toll on the community. We have noted the step-by-step progress in desegregation in this city and feel that acceptance of these steps has been remarkably free of incident."

The committee study said "more rapid progress in desegregation is now imperative." And it added:

"We recognize that decisions as to desegregation are the prerogatives of the various businesses concerned."

The resolution acknowledged progress by Columbia firms "to diminish discrimination among the races" and noted broader employment opportunities, and desegregation of civic and public areas.

"As a first statement we reiterate our belief that the final judgment must be dictated by the individual business concerned and that it must be a voluntary act," the resolution by the businessmen said.

"We recognize in certain highly competitive enterprises, dependent upon wide public support, that moves to desegregate are facilitated when they are coordinated.

"This is particularly true at this stage in Columbia among motels, hotels and theaters. Representatives of these

particular interests are aware that they are in the critical areas of consideration," the resolution said.

"We cannot be oblivious to the peaceful progress that has been made in Columbia and the potential disunity which may result if we do not move steadily along.

"Therefore, as a group of citizens called together by the Mayor and City Council, we command to the owners and operators of motels, hotels and theaters in the Great Columbia area their prompt adoption of appropriate plans to accelerate the availability of their facilities on a desegregated basis," the resolution concluded.

The vote on the resolution by the nearly 85 persons present was taken by voice and there were only a few scattered negative votes.

Late in the day, a newly-organized segregationist group said it knew of the meeting that "passed a resolution to recommend hotels and motels in the Columbia area to integrate as soon as possible."

"We had a man at that meeting," said Maurice Bessinger, chairman of the National Association for the Preservation of White People. He is a local drive-in restaurant operator.

He said his group would picket "anyone who fosters the integration movement." The NAPWP membership totals 100, he said.

Bessinger said his organization feels such matters "should be left to the best interests of both races."

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THEATER INTEGRATION ANNOUNCED

December 14, 1963

The State

A step toward voluntary desegregation of Columbia's movie theaters was announced Friday by a committee of 85 local businessmen.

The executive committee of the group, which recom-

mended the action last week, issued the following press release Friday.

"As a result of a resolution passed last week by a group of 85 representative white citizens, all indoor theaters yesterday began admitting Negroes as part of a plan of orderly, voluntary desegregation.

"The plan was worked out by the managers of the theaters and an executive committee of the large white group. The plan calls for a limited number of Negro patrons in the immediate future.

"The theaters involved are: Atlantic, Carolina, Five Points, Fox, Palmetto, and Ritz.

"Members of the executive committee said that they were gratified at the cooperative spirit of the theaters in response to the recommendation of the larger group and were confident that the citizens of the community will accept this plan with tolerance and good will."

The committee was called together earlier this year by the Mayor and City Council to study local racial relations.

A study presented to the full committee Wednesday, Dec. 4, along with the resolution which was overwhelmingly adopted at the time said:

"We recognize that decisions as to desegregation are the prerogatives of the various businesses concerned."

"The excellent race relationships existing in this city are a matter of pride and have been achieved by clear thinking and calm attitudes. It is our studied opinion that the solving of desegregation problems is best accomplished through the initiative of local citizens rather than outside directed demonstrations," the report said.

"We cannot be oblivious to the peaceful progress that has been made in Columbia and the potential disunity which may result if we do not move steadily along," the resolution said.

"Therefore as a group of citizens called together by the

Mayor and City Council, we recommend to the owners and operators of motels, hotels and theaters in the Greater Columbia area their prompt adoption of appropriate plans to accelerate availability of their facilities on a desegregated basis," the group said.